IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8941 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

BHIMAN PREMCHAND HARVANI

Versus

STTAE BANK OF SAURASHTRA

Appearance:

1. Special Civil Application No. 8941 of 2001

MR KISHOR M PAUL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1,3

MR AS VAKIL for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/07/2002

ORAL JUDGEMENT

1. Rule. Mr.A.S. Vakil waives service of rule on behalf of the respondents.

2. The short question involved in this petition is whether the petitioner is entitle to receive the benefit of the scheme known as Voluntary Retirement Scheme, circulated by the respondent - Bank vide letter dated 6th February, 2001 to all its offices which subsequently came to be amended vide circular dated 15th February, 2001 in the form of clarification issued in respect of certain queries raised in relation to the main scheme.

2.1. The petitioner is physically disabled person and he is suffering from 75% permanent partial disability. According to him, he joined the service of respondent Bank and he was appointed as cashier-cum-clerk on 13th August, 1983. At the time of filing the petition the petitioner was working as computer Operator in the office of the respondent No.1. He The petitioner, in view of the introduction of the scheme submitted an application dated 19th February, 2001, seeking benefit of the said scheme on the ground that he was a permanent employee of the respondent - Bank and he had put in 15 years of service. This application was subsequently withdrawn by the petitioner, as according to the petitioner respondent No.1 was not inclined to grant the benefit under the said scheme. The petitioner, thereafter, served legal notice dated 8th April, 2001. However, the same has not been replied to by respondent No.1. The petitioner, has, therefore, approached this Court under Article 226 of the Constitution of India seeking relief to the effect that the respondent - Bank be directed to extend the benefit of scheme alongwith prorata pension to the petitioner.

3. The sole submission that has been advanced by Mr.Kishor Paul learned counsel appearing for the petitioner is that the nationalized banks like Bank of India, United Bank of India and Indian Overseas Bank are giving benefit of pension under the scheme to the employees who have completed 15 years of service. He, therefore, submitted that the present respondent - Bank should also follow the suit and apply the same criteria in the case of its employees. In other words, he submitted that since the petitioner has put in 15 years of service, he should be considered eligible to receive the benefit under the scheme.

3.1. Mr.A.S. Vakil learned counsel appearing for the respondents has submitted that every bank has a right to frame its own scheme with regard to voluntary retirement and the employes are governed by such scheme. In view thereof, the respondent - Bank on 6th February, 2001 has evolved the scheme of voluntary retirement wherein the clause with regard to eligibility has been provided for.

Initially, according to the said clause an employee being permanent employee of the bank who had put in 15 years of service or had completed 40 years of age on 31st January, 2001 could be eligible to receive benefit of the said scheme. This criteria however, came to be amended within a short time i.e. by circular dated 15th February, 2001 in the form of clarification wherein the length of service has been determined for the purpose of the scheme as 20 years. He, therefore, submitted that the petitioner is not entitled to receive benefit of the scheme.

4. I have carefully considered the submissions advanced by both the learned counsel and I have examined the provisions of the scheme as well as the amendment brought in later on. It is true that when the scheme was introduced the criteria for eligibility was, a permanent employee of the Bank should have atleast put in 15 years of service or he should have completed 40 years of age as on 31st March, 2001. Clause - 3 reads as under :-

"Eligibility :

The scheme will be open to all permanent employees of the Bank, except those specifically mentioned as 'ineligible', who have put in 15 years of serv0ie or have completed 40 years of age as on 31.01.2001.

while calculating period of service, absence, which is not reckoned as service, will be excluded.

Age will be reckoned on the basis of the date of birth as entered in the Bank's service record."

4.1. It carved out an exception with regard to the permanent employees but who had come under the category of employees described as 'ineligible' under the scheme and the scheme was not made applicable. However, the criteria with regard to the length of service required to be put in by a permanent employee came to be amended vide circular dated 15th February, 2002. The relevant portion for the purpose of this petition is reproduced below :-

"Query-2 : Whether the applicant who have completed 15 years of service and have opted for pension will be eligible for pension or not ?

Clarification The employee who have not

> completed 20 years of service as on the relevant date are not eligible for pension."

4.2. This shows that the respondent - Bank has decided to extend the benefit of this scheme only to the employees who have completed 20 years of service and the employees who have not completed 20 years of service as on the relevant date have not been considered eligible for pension or other benefits of the scheme. Obviously, and admittedly, the petitioner has not completed 20 years of service and, therefore, according to the amended provisions of the scheme he cannot be considered eligible to receive this benefit. If, that be so, the relief claimed by the petitioner in this petition cannot be granted. No other submissions has been advanced on behalf of the petitioner. However, Mr.Paul has requested this Court to grant the liberty to the petitioner to make a representation to the Bank in respect of the issue involved in this petition. The said liberty is granted to the petitioner and it is also hoped that considering the fact that the petitioner is a disabled person and suffering from 75% permanent partial disability, as and when the representation is received by the Bank, it will be considered sympathetically. Since this petition does not have any merit, it is required to be dismissed.

With the aforesaid observations, the petition is ordered to be dismissed. Rule is discharged with no order as to costs.

8.7.2002. [AKSHAY H. MEHTA, J.]

/phalguni/